

(21,252.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 456.

CHARLES RICHARDSON, PLAINTIFF IN ERROR,

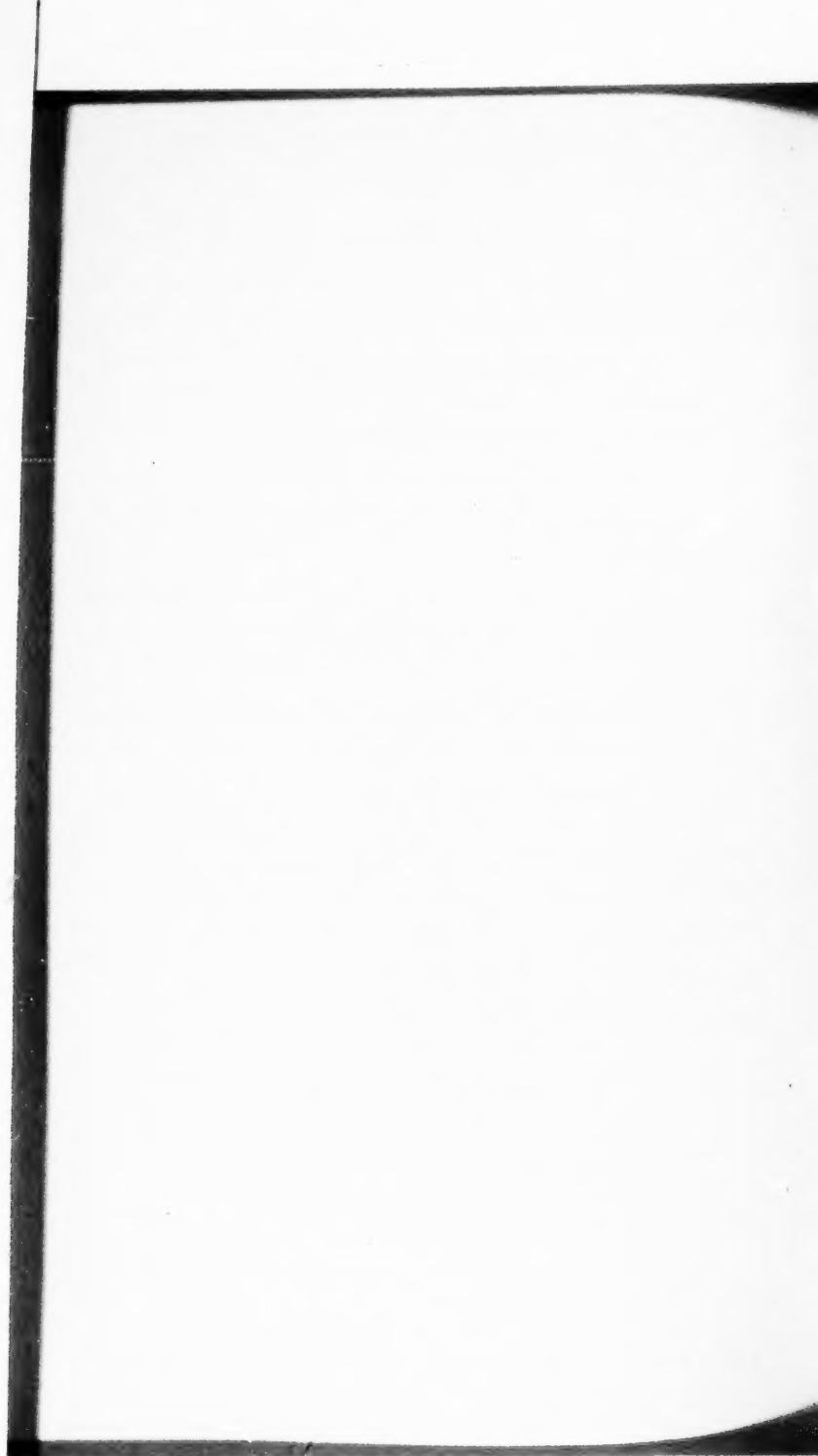
vs.

H. V. McCHESNEY, SECRETARY OF STATE OF THE
COMMONWEALTH OF KENTUCKY, ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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1 THE COMMONWEALTH OF KENTUCKY:

Pleas before the Honorable the Court of Appeals of Kentucky, at the Capitol, at Frankfort, on the 11th Day of March, A. D. 1908.

CHARLES RICHARDSON, Appellant,

vs.

H. V. MCCHESNEY, Secretary of State, &c., Appellees.

Appeal from Green Circuit Court.

Be it remembered that the appellant by his attorney on the 27th day of August, 1907, filed in the office of the Clerk of the Court of Appeals a transcript of the record which is in words and figures as follows, to-wit:

2

Green Circuit Court.

CHARLES RICHARDSON, Plaintiff,

vs.

H. V. MCCHESNEY, Secretary of State, of the Commonwealth of Kentucky; P. F. MARSHALL, Clerk of the County Court of Green Co., Ky.; E. E. BIGGS, Clerk of the County Court of Hart Co., Ky.; S. E. KERR, Clerk of the County Court of Taylor Co., Ky., Defendants.

Petition in Equity.

The plaintiff, Charles Richardson, states that he is a citizen, elector, voter and taxpayer of the County of Hart and State of Kentucky; that he was born in the United States, is subject to the jurisdiction thereof, and is a citizen of the United States of America; that he is over twenty-four years of age, and has for more than two years last past resided and still resides in said county and state; that he has all the qualifications requisite for electors of the most numerous branch of the State Legislature of Kentucky, to-wit, the House of Representatives of the General Assembly of the Commonwealth of Kentucky, and is entitled and qualified to vote for member of said House of Representatives from and for the Representative District of Kentucky in which said county of Hart is situated,

3 and is entitled and qualified to vote for member of the House of Representatives in the Congress of the United States from and for the Congressional district in which said county of Hart is situated, at the election to be held for member of the House of Representatives in the Congress of the United States in said county and Congressional district on the first Tuesday after the first Monday in November, 1908. Plaintiff states that the defendant H. V. McChesney is the duly elected, qualified and acting Secretary of State of the Commonwealth of Kentucky; that the defendant P. F. Marshall

is the duly elected, qualified and acting clerk of the County Court of Green County, Kentucky; that the defendant E. E. Biggs is the duly elected, qualified and acting clerk of the County Court of Hart County, Kentucky; and that the defendant S. E. Kerr is the duly elected, qualified and acting clerk of the County Court of Taylor County, Kentucky. Plaintiff states that his right and privilege to vote at said congressional election is the privilege belonging to him as a citizen of the United States and is guaranteed to him as such citizen by the Constitution and laws of the United States and by the Constitution of Kentucky. Plaintiff says that the Constitution of the United States provides and requires that Representatives in the Congress of the United States shall be apportioned among the several states according to their respective numbers; that by

4 the Act of Congress, approved February 25, 1882, Entitled "An Act making an apportionment of Representatives in Congress among the several States under the Tenth Census," it is provided and required that in each State the number of Representatives to which such state may be entitled in the Forty-eighth and each subsequent Congress shall be elected by districts composed of contiguous territory and containing as nearly as practicable an equal number of inhabitants, and equal in number to the number of representatives to which such State may be entitled in Congress, no one district electing more than one representative, and that said provision and requirement remained and was in full force and effect as a law of the United States on May 26, 1890, and is still in full force and effect; that by the act of Congress, approved February 7, 1891, Entitled "An act making an apportionment of Representatives in Congress among the several States under the Eleventh census" it was provided and required that in each State the number of Representatives to which such State may be entitled in the Fifty-third and each subsequent Congress shall be elected by districts composed of contiguous territory and containing as nearly as practicable an equal number of inhabitants, and equal in number of Representatives to which such State may be entitled in Congress, no one district

5 electing more than one representative; and that said provision and requirement remained and was in full force and effect as a law of the United States and on March 11th and 12th, 1898, and is still in full force and effect; that by the act of Congress approved January 16, 1901 Entitled an act making an apportionment of Representatives in Congress among the several States under the twelfth census" it was provided and required that in each State the number of Representatives to which such state may be entitled in the Fifty-Eighth and each subsequent Congress shall be elected by districts composed of contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants, and that said districts shall be equal in number to the number of Representatives to which such State may be entitled in Congress, no one district electing more than one representative, and the said act and said provision and requirement remain and are still in full force and effect as a law of the United States.

Plaintiff states that by the act of the General Assembly of the Com-

monwealth of Kentucky, approved April 15, 1882, entitled an Act to apportion the state into eleven Congressional districts," the State of Kentucky was laid off into eleven Congressional districts composed as follows, to-wit:

The First district, composed of the counties of Fulton, Hickman, Graves, Ballard, McCracken, Marshall, Galloway, Trigg, Lyon, Livingston, Crittenden and Caldwell.

The second district composed of the counties of Christian, Hopkins, Webster, Union, Henderson, McLean, Daviess and Hancock.

6 The Third district, composed of the counties of Muhlenburg, Todd, Logan, Butler, Edmondson, Warren, Simpson, Allen, Monroe, Cumberland and Clinton.

The Fourth district composed of the counties of Ohio, Grayson, Breckinridge, Meade, Hardin, Bullitt, Nelson, Larue, Marion, and Washington.

The Fifth district, composed of the counties of Jefferson.

The Sixth district composed of the counties of Trimble, Carroll, Gallatin, Grant, Boone, Kenton, Campbell and Pendleton.

The Seventh district, composed of the counties of Oldham, Henry, Owen, Franklin, Scott, Harrison, Bourbon, Fayette and Woodford.

The Eighth district, composed of the counties of Shelby, Spencer, Anderson, Mercer, Boyle, Lincoln, Garrard, Jessamine, Madison, Rockcastle, Jackson, Owsley and Laurel.

The Ninth district, composed of the counties of Bracken, Mason, Robertson, Nicholas, Fleming, Bath, Rowan, Lewis, Greenup, Carter, Boyd, Lawrence, Johnson, and Martin.

The Tenth district, composed of the counties of Pike, Letcher, Floyd, Magoffin, Morgan, Elliott, Menifee, Wolf, Powell, Montgomery, Clark, Estill, Lee, Breathitt, Perry, Clay, Leslie, Knox, Bell and Harlin.

7 The Eleventh district composed of the counties of Whitley, Wayne, Pulaski, Casey, Russell, Adair, Taylor, Green, Metcalfe, Barren, and Hart.

But plaintiff says that by a pretended and invalid and unconstitutional act attempted to be enacted by the General Assembly of the Commonwealth of Kentucky, approved May 26, 1890, it was attempted to lay off the State of Kentucky into eleven Congressional districts composed as follows, to wit:

The First district, composed of the counties of Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, and Trigg.

The Second district, composed of the counties of Christian, Daviess, Hancock, Henderson, Hopkins, McLean, Union, and Webster.

The Third district, composed of the counties of Allen, Butler, Barren, Cumberland, Edmondson, Logan, Monroe, Muhlenburg, Simpson, Todd, and Warren.

The Fourth district, of the counties of Breckinridge, Bullitt, Grayson, Green, Hardin, Hart, Larue, Marion, Meade, Nelson, Ohio, Taylor, and Washington.

The Fifth district, composed of the county of Jefferson.

The Sixth district, composed of the counties of Boone, Campbell, Carrol, Gallatin, Grant, Kenton, Pendleton, and Trimble.

8 The Seventh district, composed of the counties of Bourbon, Fayette, Franklin, Henry, Oldham, Owen, Scott, and Woodford.

The Eighth district, composed of the counties of Anderson, Boyle, Garrard, Jessamine, Lincoln, Madison, Mercer, Rockcastle, Shelby, Spencer, and Jackson.

The Ninth district, composed of the counties of Bracken, Bath, Boyd, Carter, Fleming, Greenup, Harrison, Lewis, Lawrence, Mason, Nicholas, Robertson, and Rowan.

The Tenth district, composed of the counties of Breathitt, Clark, Elliott, Estill, Floyd, Johnson, Knott, Lee, Martin, Magoffin, Montgomery, Morgan, Menefee, Pike, Powell, and Wolfe.

The Eleventh district, composed of the counties of Adair, Bell, Casey, Clay, Clinton, Harlan, Knox, Letcher, Leslie, Laurel, Metcalfe, Owsley, Perry, Pulaski, Russell, Wayne, and Whitley.

Plaintiff states that by another pretended invalid, and unconstitutional act, approved March 12, 1898, it was attempted by the General Assembly of the Commonwealth of Kentucky to take the counties of Cumberland and Monroe from the Third Congressional District of Kentucky and to add them to the Eleventh Congressional District of Kentucky, and to take the county of Metcalf, from the

Eleventh Congressional District of Kentucky and add said county to the Third Congressional District of Kentucky, and that by a pretended and invalid and unconstitutional act, approved March 11, 1898 it was attempted by the General Assembly of the Commonwealth of Kentucky to take the county of Jackson from the Eighth Congressional District of Kentucky, and add said county to the Eleventh Congressional District of Kentucky. Plaintiff states that according to the United States Census of 1880, and in fact, the population of the State of Kentucky was 1,648,690, and the average population of each of the Eleven Congressional Districts was 149,881, that according to the Census of 1890, and in fact, the population of the State of Kentucky was 1,858,635, and the average population of each Congressional district was 168,966; that according to the Census of 1900, and in fact, the population of the State of Kentucky was 2,247,174, and the average population of each Congressional District was 195,197; that according to said three Censuses of the United States, and in fact, the population of said pretended and unlawful eleven Congressional districts attempted to be created by said invalid and unconstitutional acts of the General Assembly of the Commonwealth of Kentucky, approved respectively May 26, 1890, March 12, 1898, and March 11, 1898, the aggregate population of the counties composing each of said pretended districts was as follows, to wit:

10		First District.	
1880		
1890		149740
1900		170500
		201956

Second District.

1880	152960
1890	174805
1900	203216

Third District.

1880	156858
1890	166631
1900	179518

Fourth District.

1880	188124
1890	192064
1900	210314

Fifth District.

1880	146010
1890	188598
1900	232549

11 Sixth District.

1880	144160
1890	160649
1900	179430

Seventh District.

1880	13003-
1890	141461
1900	151453

Eighth District.

1880	128656
1890	134510
1900	143089

Ninth District.

1880	164085
1890	176177
1900	200064

Tenth District.

1880	114024
1890	149068
1900	187171

Eleventh District.

1880	172630
1890	213282
1900	257582

12 Plaintiff says that the state can be divided into eleven districts of compact and contiguous territory and each approximately and reasonably equal in inhabitants and that said pretended acts of May 26, 1890, March 12, 1898, and March 11, 1898, are unconstitutional and void, that they are in violation of the provisions of the Constitution of the United States which guarantee to every State in the Union a Republican form of government, and to the citizens thereof and to the citizens of the United States equal rights and representation; that they are in violation of the first, second, and third and fourth sections of the Constitution of Kentucky and in violation of the sixth section of said Constitution which provides that all elections shall be free and equal; that said pretended acts are violations of and repugnant to the act of Congress, approved February 2, 1872, and are violations of and repugnant to the act of Congress, approved February 25, 1882, and are violations of and repugnant to said act of Congress approved February 7, 1891, which requires the Congressional districts of the several States to be composed of contiguous territory and to contain as nearly as practicable an equal number of inhabitants, and that said pretended acts of May 26, 1890, and March 12, 1898, and March 11, 1898, are also in violation of and repugnant to said act of Congress of the

13 United States, approved January 16, 1901, which requires members of said Congress to be elected by districts composed of contiguous and compact territory. Plaintiff says that said pretended eleven Congressional districts so attempted to be created by said unconstitutional and unlawful acts of the General Assembly of the Commonwealth of Kentucky do not contain as nearly as practicable an equal number of inhabitants, but utterly ignore the principle and rule of equality; that according to the censuses of the United States of 1890 and of 1900, said pretended districts so attempted to be created have population respectively in excess or in deficit of the average population of a Congressional District as follows, to wit:

	Census of 1890.	Census of 1900.
First District.....	Excess..... 1534	Excess..... 6768
Second District.....	Excess..... 5839	Excess..... 8238
Third District.....	Deficit..... 2335	Deficit..... 15580
Fourth District.....	Excess..... 23098	Excess..... 15216
Fifth District.....	Excess..... 19632	Excess..... 37451
Sixth District.....	Deficit..... 8317	Deficit..... 15668
Seventh District.....	Deficit..... 27505	Deficit..... 43625
Eighth District.....	Deficit..... 34456	Deficit..... 51989
Ninth District.....	Excess..... 7211	Deficit..... 4966
Tenth District.....	Deficit..... 19898	Deficit..... 7929
Eleventh District.....	Excess..... 44314	Excess..... 62484

- 14 Plaintiff states that said pretended Fourth District has a great excess of population above the average population of a Congressional District, and that the holding of Congressional elections in said pretended Fourth District under said unconstitutional apportionment acts of the General Assembly of the Commonwealth of Kentucky deprive this plaintiff and other citizens of said various districts of equal representation in Congressional elections and in Congress of the United States and thereby abridge the privileges of plaintiff and said other citizens of the United States as such citizens. Plaintiff states that in all of the Congressional districts of Kentucky the Republican and Democratic parties will respectively nominate candidates for election to the House of Representatives of the Congress of the United States, and the chairman and secretaries of the conventions which shall nominate such candidates will in due time not more than sixty nor less than thirty days before the Congressional election to be held in November, 1908, certify to the defendant, H. V. McChesney, as Secretary of State of the Commonwealth of Kentucky, and to his successor in said office, if he shall not then be the incumbent of said office, the names of said nominees in said Congressional districts; that the republican party will nominate a candidate and the Democratic party will nominate a
- 15 candidate for the office of member of the House of Representatives in the Congress of the United States from and for the Fourth District of said State, and will file in the office of the Secretary of State of the Commonwealth of Kentucky, a certificate of nomination of each of said candidates, and that the like action will be taken by the chairman and secretaries of the various Republican and Democratic conventions held in the various Congressional districts of the State of Kentucky, and that unless restrained and enjoined therefrom by this Honorable Court the said defendant, H. V. McChesney, Secretary of State as aforesaid, and his successor in said office, if he shall not then be the incumbent of said office will certify said candidates whose names shall be so certified to such Secretary of State as the nominees of the Republican and Democratic parties respectively to the County Court Clerks of all the counties attempted by said invalid and unlawful and unconstitutional acts to be embraced in said pretended and unlawful Fourth Congressional District, and will certify said names to said County Court Clerks in said counties of Green, Hart and Taylor, to the great and irreparable damage and injury of plaintiff; that said counties of Green, Hart and Taylor are not lawfully a part of said Fourth Congressional District and have not been removed from the Eleventh Congressional District of Kentucky or placed in any other Congressional District of said State by any lawful or constitutional act of the General Assembly of the Commonwealth of
- 16 Kentucky, but said defendant H. V. McChesney, Secretary of State as aforesaid, and his successor in said office if he shall not then be the incumbent of said office will, unless enjoined and restrained therefrom by order of this Court, refuse to certify the names of the Republican and Democratic and other candidates nominated by their respective parties in the Eleventh Congressional District to

the said County Court Clerks of Green, Hart and Taylor counties, which are constituent parts of the Eleventh Congressional District of Kentucky, to be by said Clerks printed and caused to be printed upon the ballots to be used at said election for member of Congress of the United States in November, 1908; and said defendants said H. V. McChesney's successor in office will continue to act in like manner as to nominees for Congress in the Commonwealth of Kentucky unless this Court shall enjoin and restrain him therefrom. And plaintiff says that unless enjoined and restrained therefrom by this court, the said defendants said clerks of the County Courts of the Counties of Green, Hart and Taylor, will print and cause to be printed upon the ballots to be used in said counties at said elections for members of Congress in November, 1908, the names of

17 the persons nominated for Congress by said Republican and Democratic parties respectively in said pretended and unlawful Fourth Congressional District of Kentucky and will refuse to print and cause to be printed upon said ballots to be used in said counties at said election the names of the persons nominated for Congress in the Eleventh Congressional District of Kentucky by said parties respectively, as the nominees for Congress of said parties respectively to be voted for in said counties at said election in November, 1908.

Wherefore, Plaintiff, having no adequate or in fact any remedy at law, prays that said pretended acts, approved May 26, 1890, March 12, 1898, and March 11, 1898, be declared unconstitutional, and void and repugnant to and in violation of the acts of Congress of the United States; that said H. V. McChesney, defendant herein, and his successor in said office of Secretary of State, if he shall cease to be the incumbent of said office, be enjoined and restrained from certifying the names of said candidates for Congress in the Fourth Congressional District of Kentucky to the County Court Clerks of the counties of Green, Hart and Taylor, to be by such Clerks, printed upon the ballots to be used in said counties at said Congressional election to be held in November, 1908; that said defendant, Mc-

Chesney and his said successor in said office be enjoined and

18 restrained from refusing to certify the names of the candidates of said parties certified to him as the nominees of the Republican and Democratic parties in the Eleventh Congressional District of Kentucky to the County Court Clerks of said counties of Green, Hart and Taylor, to be by said Clerks printed upon the ballots to be used in said counties at said Congressional election to be held in November, 1908, and that said defendant, McChesney and his successor in said office be required to certify to the County Court Clerks of said counties of Green, Hart and Taylor, the names of the candidates certified to him, said defendant, as Secretary of State, by the chairman and presiding officers and secretaries of the Republican and Democratic and other Congressional conventions Congressional committees, of the Eleventh Congressional District of Kentucky, to be by said Clerks printed upon the ballots to be used in said counties at said election; and plaintiff further prays that said defendant McChesney and his successor in said office be enjoined and

restrained from proceeding under or in accordance with said void and unconstitutional acts approved respectively May 26, 1890, March 12, 1898, and March 11, 1898, or from certifying to the various County Court Clerks of Kentucky the names of any nominees for said office of member of Congress according to said void and unconstitutional acts, and that he, said defendant, H. V. Mc-

19 Chesney and his successor in said office, be required to observe and proceed under and in conformity with said act of April 15, 1882, and to certify to the various County Court Clerks of Kentucky the names of the various nominees in the various districts of Kentucky of the Republican and Democratic and other parties therein, to be by said Clerks printed upon the ballots to be used in said counties at the Congressional election to be held in November, 1908, according as said counties are embraced in and constitute parts of the various eleven Congressional districts of Kentucky as constituted by and under said act of the General Assembly of the Commonwealth of Kentucky, approved April 15, 1882.

And plaintiff prays that said defendants, said Clerks of said County Courts of said Counties of Green, Hart and Taylor, be enjoined and restrained from printing or causing to be printed upon the ballots to be used in said counties at said election for member of Congress in November, 1908, the names of any person nominated for Congress by said Republican or Democratic party in said pretended and unlawful Fourth Congressional District of Kentucky, and from refusing or failing to print and cause to be printed upon said ballots so to be used in said counties at said election the names of the persons nominated for Congress in the Eleventh Congressional District of

20 Kentucky by said parties respectively as the nominees for Congress of said parties respectively *as the nominees for Congress of said parties respectively* to be voted for in said counties at said election in November, 1908. And plaintiff prays for all proper and general relief.

W. C. HALBERT,
 WORTHINGTON & COCHRAN,
 WM. H. HOLT,
 GEORGE DU RELLE,

Att'ys for Plaintiff.

STATE OF KENTUCKY,
County of Hart, ss:

The plaintiff, Charles Richardson, says that he believes the statement of the foregoing petition are true and that no injunction herein has been heretofore refused by any court or circuit judge nor has any application been made to any court or officer to grant an injunction herein.

CHARLES RICHARDSON.

21 Subscribed and sworn to before me by Charles Richardson this 3rd day of January, 1907. My commission will expire, February 13, 1910.

H. F. MANSFIELD,
N. P., Hart County, Kentucky.

Endorsed as follows: Petition filed in office and summons and copy issued to Green County and summons and copy issued to Taylor County and summons and copy issued to Hart county and summons issued to Franklin County. This January 7th, 1907. Pilson Smith, Clerk Green Circuit Court.

22

Green Circuit Court.

CHARLES RICHARDSON, Plaintiff,

vs.

H. V. McCHESNEY, Secretary of State, of the Commonwealth of Kentucky; P. F. MARSHALL, Clerk of the County Court of Green County, Kentucky; E. E. Biggs, Clerk of the County Court of Hart County, Kentucky; S. E. KERR, Clerk of the County Court of Hart County, Kentucky, Defendants.

Demurrer.

The defendants, H. V. McChesney, Secretary of State of the Commonwealth of Kentucky, P. F. Marshall, Clerk of the County Court of Green County, Ky., E. E. Biggs, Clerk of the County Court of Hart County, Ky., and S. E. Kerr, Clerk of the County Court of Taylor county, Ky., come and demur to the plaintiff's petition herein;

1st. Because same does not state facts sufficient to constitute a cause of action, and,

2nd. Because same does not state facts sufficient to support a cause of action.

23

JEFF HENRY,

C. H. NOGGLE,

Att'ys for Defendants.

Endorsed as follows: Filed in office this February 4, 1907. Pilson Smith, Clerk.

Green Circuit Court. In Equity.

CHARLES RICHARDSON, Plaintiff,

vs.

H. V. McCHESNEY, & C., Defendants.

Copy Order.

This day came defendants by Attys. and produced their demurrer to plaintiff's petition herein which is ordered filed in office.
This Feby. 4th, 1907.

PILSON SMITH,

Clerk Green Circuit Court.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

24

Green Circuit Court. In Equity.

9th Day, March Term, 27th Day, March, 1907.

CHARLES RICHARDSON, Plaintiff,
against

H. V. McCHESNEY "ET AL.," Defendants.

This day came plaintiff by Atty. and produced a map of the State of Kentucky, and by agreement same is ordered filed, and came defendants by Attys. and called up their general demurrer to plaintiff's petition herein, and this cause is now submitted on said demurrer.

I. H. THURMAN,
Judge, G. C. C.

25°

Green Circuit Court. In Equity.

— Day, June Term, 27th Day, June, 1907.

CHARLES RICHARDSON, Plaintiff,
against

H. V. McCHESNEY, &C., Defendants.

This cause having been heretofore submitted upon the defendants demurrer to the plaintiff's petition, and the court being sufficiently advised it is ordered and adjudged that the demurrer to the petition be sustained, and the plaintiff declining to plead further, it is therefore ordered and adjudged by the court that the plaintiff's petition be dismissed, and that the defendants recover of the plaintiff their costs herein expended for which they may have execution, to all of which the plaintiff objects and excepts and prays an appeal to the Court of Appeals, which is granted according to law, and this case is now continued.

I. H. THURMAN,
Judge, G. C. C.

26

CHARLES RICHARDSON, Plaintiff,
vs.

H. V. McCHESNEY, &C., Defendants.

I. Pilson Smith, Clerk Green Circuit Court, hereby certify that the foregoing is a true, complete and correct copy of all the record in the above styled action; except the map of Kentucky filed herein, the original of which is by agreement made part hereof.

Given under my hand this July 10th, 1907.

PILSON SMITH,
Clerk Green Circuit Court.

27

And with said transcript there was filed an exhibit and which is as follows:

(Here follows map marked p. 28.)

29 And with said transcript the appellant filed a statement and which is in words and figures as follows, to-wit:

30 *Statement.*

Court of Appeals.

CHARLES RICHARDSON, Appellant,

vs.

H. V. McCHESNEY, Secretary of State, &c., Appellees.

A.—CHARLES RICHARDSON, Appellant,

B.—H. V. McCHESNEY, Secretary of State of the Com'lth of Ky.;
P. F. MARSHALL, Clerk of the Green County Court; E. E.
BIGGS, Clerk of the Hart County Court; S. E. KERR, Clerk
of the Taylor County Court, Appellees.

C.—The judgment appealed from was rendered on June 27, 1907,
and will be found on page — of this record.

D.—Appeal granted below—no summons necessary.

W. C. HALBERT,

WM. H. HOLT, &c.,

Att'ys for Appellant.

31 Be it remembered that at a Court of Appeals of Kentucky
held at the Capitol at Frankfort, on the 16th day of October,
1907, the following order was entered, to-wit:

CHARLES RICHARDSON, Appellant,

vs.

H. V. McCHESNEY, Secretary of State, &c., Appellees.

Appeal from Green Circuit Court.

This case is ordered to be submitted.

And afterwards at a Court of Appeals of Kentucky held at the
Capitol at Frankfort on the 11th day of March, 1908, the following
judgment was entered, to-wit:

CHARLES RICHARDSON, Appellant,

vs.

H. V. McCHESNEY, Secretary of State, &c., Appellees.

Appeal from Green Circuit Court.

The Court being sufficiently advised it seems to them there is no
error in the judgment herein. It is therefore considered that this
judgment be affirmed, which is ordered certified to said Court.

32 It is further considered that the appellees recover of the appellant their costs herein expended.

And on said date the Court delivered the following opinion:

33 Court of Appeals of Kentucky.

March 11, 1908.

(To be Reported.)

CHARLES RICHARDSON, Appellant,

vs.

H. V. MCCHESNEY, Secretary of State, Appellee.

Appeal from Green Circuit Court.

Opinion of the Court by Judge Carroll.

This suit was brought by appellant for the purpose of having declared invalid the act of 1890 and the acts of 1898 dividing the State into Congressional Districts.

In 1890 the General Assembly by an act approved May 26th, laid off the State into eleven Congressional districts. In 1898 by an act approved March 12th, the counties of Cumberland and Monroe were taken from the third Congressional district and added to the Eleventh district; and the county of Metcalfe was taken from the Eleventh Congressional district and added to the Third Congressional district.

34 By an act approved March 11th, 1898, the county of Jackson was transferred from the Eighth to the Eleventh Congressional district. The chief objection is to apportionment made under the act of 1890.

The ground upon which these acts were assailed is that the population of the districts is grossly unequal—the effect being to deny to the Republican party, who are the instigators of this suit, a fair and equal representation in the distribution of the State into Congressional districts. In short, the charge in effect is that the state was “gerrymandered” in the interest of the Democratic party.

The apportionment complained of was made under the census of 1880. The census of 1890 had not been completed when it was made. The population of the State under the census of 1880 was 1,648,690, which, divided by eleven would make the population of each district 149,881. The petition sets out that the population of the several districts in 1880 was as follows:

First District	149,740
Second “	152,960
Third “	156,658
Fourth “	188,124
Fifth “	146,010
Sixth “	144,160
Seventh “	130,003
Eighth “	128,656
Ninth “	164,085
Tenth “	114,024
Eleventh “	172,630

35 It will thus be seen that the population of the districts is not grossly unequal when compared with the apportionment but this question is not material in the disposition of the case, as we are of the opinion that it is not within the power of the courts to control the legislative department in the creation of Congressional districts. There is no mention of Congressional districts in the Constitution of the State; nor is there in that instrument any direction to the General Assembly as to how the districts shall be laid off. In the matter of dividing the State into Congressional districts the Legislature, at least so far as the power and authority of this court extends is supreme. This Court has no control over its action. It would be exceeding the power granted us to undertake to revise or annul a legislative act relating to a subject over which the Legislature has absolute control. Except when limited by the Constitution of the State, the General Assembly especially in administrative and political affairs is beyond the reach of the judiciary of the State. We have no authority to pass judgment upon its acts. In no case that has come under our notice have the courts undertaken to attempt to restrain the Legislative departments, unless it violated some provision of the organic law of the State. If, in the matter of dividing the State into Congressional districts this court should undertake

36 to declare invalid the division made by the legislative department, it would simply result in setting up our judgment against the judgment of the members elected for the purpose of performing this duty. We would be putting up our opinion against those in whom the exclusive right to regulate this matter has been lodged, and be arrogating to ourselves wisdom, honesty and fairness superior to those charged by law with the control of these matters. *Moore v. City of Georgetown*, 32 Ky. L. R., 323. When the Legislature has exceeded its legitimate powers by enacting laws in conflict with the Constitution, or that are prohibited by it, we have not hesitated to interpose the veto power lodged in the judiciary for the purpose of preserving the integrity of the organic law under which all departments of the State government were created and live and to which all of them owe obedience. And so when the General Assembly in the division of the State into Senatorial and Legislative districts grossly violated that provision of the Constitution directing that the districts should be "as nearly equal in population as may be," we exercised the power vested in the judiciary to protect from invasion by whatever source the fundamental law of the State, and declared the act invalid. *Ragland v. Anderson*, 30 Ky. L. R.,

37 1199. But, in the matter of Congressional districts, we find nothing in our State Constitution to guide us. There is nowhere any limitation upon the power of the legislature, and it would be assuming authority this Court does not possess if we undertook to control a coördinate department of the government in the performance of a power vested exclusively in it. It is not for the judiciary to question the policy, expediency or propriety of laws enacted by the General Assembly, unless they conflict with the Constitution. Judge Cooley in his work on Constitutional Limitations,

page 200, thus states with great force and clearness, the prevailing doctrine upon this subject:

"The moment a court ventures to substitute its own judgment for that of the Legislature, in any case where the Constitution has vested the Legislature with power over the subject, that moment it enters upon a field where it is impossible to set limits to its authority, and where its discretion alone will measure the extent of its interference. The rule of law upon this subject appears to be, that, except where the constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operate according to natural justice or not in any particular case. The courts are not the guardians of the rights of the people of the State, except as those rights are secured by some constitutional provision which comes within the judicial cognizance. The protection against unwise or oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fails, the people in their sovereign capacity can correct the evil; but courts cannot assume their rights. The judiciary can only arrest the execution of a statute when it conflicts with the constitution. It cannot run a race of opinions upon points of right, reason and expediency with the lawmaking power. Any legislative act which does not encroach upon the power apporportioned to the other departments, being *prima facie* valid, must be enforced, unless restrictions upon the legislative authority can be pointed out in the Constitution, and the case shown to come within them."

Nor do we find in the Constitution of the United States any direction to the States upon this subject. The only provisions in that instrument relating to it are these:

Sec. 4, art. 1, provides "the time, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but that Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

And the Fourteenth Amendment provides:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed."

It will thus be seen that the Constitution of the United States has left matters relating to Congressional districts to the disposition of the States. Nor has the Congress of the United States undertaken to legislate upon the subject, except to provide "that the number of Congressmen to which each state may be entitled in Congress shall be elected by districts composed of contiguous territory and containing as nearly as practicable an equal number of inhabitants. The said districts shall be equal to the number of Representatives to which such State may be entitled in Congress, no one district electing more than one Representative." What right, if any, Congress has to control or supervise the action of State legislatures in the division of the States into Congressional districts, we need express no opinion in the absence of a judicial determination by the Supreme Court of

the United States of the power of Congress to control the States in this matter.

Wherefore the judgment of the lower court is affirmed.

40 W. C. Halbert, Wm. H. Holt, George DuRelle, E. L. Worthington, For Appellant.

C. H. Noggle, For Appellee.

41 And afterwards there was filed in the office of the Clerk of the Court of Appeals of Kentucky on the 12th day of June, 1908, an Assignment of Errors which is hereby attached and is as follows, to-wit:

42 Court of Appeals of Kentucky.

CHARLES RICHARDSON, Appellant,

vs.

H. V. McCHESNEY, Secretary of State, of the Commonwealth of Kentucky; P. F. MARSHALL, Clerk of the County Court of Green County, Kentucky; E. E. BIGGS, Clerk of the County Court of Hart County, Kentucky; and S. E. KERR, Clerk of the County Court of Taylor County, Kentucky, Appellees.

Assignment of Errors.

Plaintiff-in-error, Charles Richardson, feeling himself aggrieved by the findings and judgment of the Court of Appeals of Kentucky, in the above entitled cause, comes, by his attorneys, and assigns error thereto as follows, to-wit.

I. In holding and adjudging that the Statute passed by the General Assembly of the Commonwealth of Kentucky, approved May 26, 1890, entitled, "An Act to re-apportion the state into eleven Congressional districts" was not in conflict with or repugnant to Article 4, §4 of the Constitution of the United States in denying to the State of Kentucky a Republican form of Government; plaintiff-in-error in the above entitled cause specially set up and claimed, and now avers that said Statute of the State of Kentucky was and has always been in conflict with, and repugnant to said provision of said Constitution of the United States.

43 II. The Court of Appeals of Kentucky erred in deciding that the Statute of Kentucky, to-wit, the Act passed by the General Assembly of Kentucky on March 12, 1898, entitled, "An Act changing the boundaries of the third and eleventh Congressional districts" was not in conflict with or repugnant to Article 4, §4 of the Constitution of the United States, in denying to the State of Kentucky a Republican form of Government; plaintiff-in-error in the above entitled cause specially set up and claimed, and now avers that said Statute of the State of Kentucky was and has always been in conflict with, and repugnant to the provision of said Constitution of the United States.

III. The Court of Appeals of Kentucky erred in deciding that the Statute of Kentucky, to-wit, the Act passed by the General Assembly

of Kentucky, on March 11, 1898, entitled, "An Act to change the boundaries of the eighth and eleventh Congressional districts" was not in conflict with or repugnant to Article 4, §4 of the Constitution of the United States, in denying to the State of Kentucky a Republican form of Government; plaintiff-in-error in the above entitled cause specially set up and claimed, and now avers that said Statute of the State of Kentucky was and has always been in conflict with, and repugnant to the provision of said Constitution of the United States.

IV. The Court of Appeals of Kentucky erred in deciding that the Statute of Kentucky, to-wit, the Act passed by the General Assembly of Kentucky on May 26, 1890, entitled, "An — to re-apportion the state into eleven Congressional districts" was not in conflict with or

44 repugnant to the Act of Congress approved February 25, 1882, entitled, "An Act making an apportionment of representatives in Congress among the several states under the tenth census," providing that in each state the number of representatives to which such state may be entitled in the Forty-eighth and each subsequent Congress shall be elected by districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants; plaintiff-in-error in the above entitled cause specially set up and claimed, and now avers that said statute of the State of Kentucky was and has always been in conflict with and repugnant to the said provision of said Statute of the United States.

V. The Court of Appeals of Kentucky erred in deciding that the statute of Kentucky, to-wit, the Act passed by the General Assembly of Kentucky on May 26, 1890, entitled, "An Act to re-apportion the state into eleven congressional districts," was not in conflict with or repugnant to the Act of Congress approved February 7, 1891, entitled, "An Act making an apportionment of representatives in Congress among the several states under the eleventh census," providing that in each state the number of representatives to which such state may be entitled in the Fifty-third and each subsequent Congress shall be elected by districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants; plaintiff-in-error in the above entitled cause specially set up and claimed, and now avers that said statute of the State of Kentucky was and has always been in conflict with, and repugnant to the said provision of said Statute of the United States.

45 VI. The Court of Appeals of Kentucky erred in deciding that the Statute of Kentucky, to-wit, the Act passed by the General Assembly of Kentucky on May 26, 1890, entitled, "An Act to reapportion the state into eleven congressional districts," was not in conflict with or repugnant to the Act of Congress approved January 16, 1901, entitled, "An Act making an apportionment of representatives in Congress among the several states under the twelfth census," providing that in each state the number of representatives to which such state may be entitled in the Fifty-eighth and each subsequent Congress shall be elected by districts composed of contiguous and compact territory and containing as nearly as practicable an equal number of inhabitants; plaintiff-in-error in the above en-

titled cause specially set up and claimed, and now avers that said statute of the State of Kentucky was and has always been in conflict with and repugnant to the said provision of said Statute of the United States.

VII. The Court of Appeals erred in deciding that the Statute of Kentucky, to-wit, the Act passed by the General Assembly of Kentucky on March 12, 1898, entitled, "An Act changing the boundaries of the third and eleventh Congressional districts," was not in conflict with or repugnant to the Act of Congress approved February 7, 1891, entitled, "An Act making an apportionment of representatives in Congress among the several states under the eleventh census," providing that in each state the number of representatives to which such state may be entitled in the Fifty-third and each subsequent

46 Congress shall be elected by districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants; plaintiff-in-error in the above entitled cause specially set up and claimed, and now avers that said statute of the State of Kentucky was and has always been in conflict with, and repugnant to, the said provision of said Statute of the United States.

VIII. The Court of Appeals of Kentucky erred in deciding that the Statute of Kentucky, to-wit, the Act passed by the General Assembly of Kentucky on March 12, 1898, entitled, "An Act changing the boundaries of the third and eleventh Congressional districts," was not in conflict with or repugnant to the Act of Congress approved January 16, 1901, entitled, "An Act making an apportionment of representatives in Congress among the several states under the twelfth census," providing that in each state the number of representatives to which such state may be entitled in the Fifty-eighth and each subsequent Congress shall be elected by districts composed of contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants; plaintiff-in-error in the above entitled cause specially set up and claimed, and now avers that said Statute of the State of Kentucky was and has always been in conflict with and repugnant to the said provision of said Statute of the United States.

IX. The Court of Appeals of Kentucky erred in holding that the Statute of Kentucky, to-wit, the Act passed by the General Assembly of Kentucky on March 11, 1898, entitled, "An Act to change the boundaries of the eighth and eleventh Congressional districts," was not in conflict with or repugnant to the Act of 47 Congress approved February 7, 1891, entitled, "An Act making an apportionment of representatives in Congress among the several states under the eleventh census," providing that in each state the number of representatives to which such state may be entitled in the Fifty-third and each subsequent Congress shall be elected by districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants; plaintiff-in-error in the above entitled cause specially set up and claimed, and now avers that said Statute of the State of Kentucky was and has

always been in conflict with and repugnant to the said provision of said statute of the United States.

X. The Court of Appeals of Kentucky erred in deciding that the Statute of Kentucky, to-wit, the Act passed by the General Assembly of Kentucky on March 11, 1898, entitled, "An Act to change the boundaries of the eighth and eleventh Congressional districts," was not in conflict with or repugnant to the Act of Congress approved January 16, 1901, entitled, "An Act making an apportionment of representatives in Congress among the several states under the twelfth census," providing that in each state the number of representatives to which such state may be entitled in the Fifty-eighth and each subsequent Congress shall be elected by districts composed of contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants; plaintiff-in-error in the above entitled cause specially set up and claimed, and now avers that

48 said Statute of the State of Kentucky was and has always been in conflict with and repugnant to the said provision of said Statute of the United States.

XI. The Court of Appeals of Kentucky erred in holding and adjudging that in dividing the State of Kentucky into Congressional districts, the Legislature of Kentucky is supreme, so far as the power and authority of said Court extends, and that said Court has no control over the action of said Legislature in that behalf.

XII. The Court of Appeals of Kentucky erred in deciding and adjudging that it, said Court, was without power to declare void a legislative act relating to the division of said State into Congressional districts and was without authority to pass judgment upon the validity of such an act.

XIII. The Court of Appeals of Kentucky erred in holding that the plaintiff-in-error was not entitled to the injunction which he prayed, and in not holding that said Statutes of Kentucky were illegal and void, and in conflict with the Constitution and Statutes of the United States, and because they denied to plaintiff-in-error the right and privilege conferred upon him by said Constitution.

W. C. HALBERT,
E. L. WORTHINGTON,
W. H. HOLT,
GEORGE DU RELLE,
Counsel for Plaintiff-in-Error.

Filed Jun- 12, 1908.

NAPIER ADAMS, C. C. A.

Filed June 11th, 1908.

ED. C. O'REAR,

Chief Justice Court of Appeals of Kentucky.

49 And on said date there was filed in the office of the Clerk of the Court of Appeals of Kentucky a petition for Writ of Error, and which is attached hereto, and is as follows, to-wit:

Court of Appeals of Kentucky.

CHARLES RICHARDSON, Appellant,

vs.

H. V. McCHESNEY, Secretary of State, of the Commonwealth of Kentucky; P. F. MARSHALL, Clerk of the County Court of Green County, Kentucky; E. E. BIGGS, Clerk of the County Court of Hart County, Kentucky; and R. E. KERR, Clerk of the County Court of Taylor County, Kentucky, Appellees.

Petition for Writ of Error.

The above named Charles Richardson, conceiving himself aggrieved by the decision made and judgment rendered by the Court of Appeals of Kentucky, in the cause of the above named appellant and plaintiff-in-error against the above named appellees and defendants-in-error in said Court, at its January Term, 1908, to-wit, on the 11th day of March, A. D. 1908, said Court being the highest Court of the State of Kentucky and the Court of last resort for the hearing and determination of said cause, in which cause was drawn in question the validity of three Statutes of the State of Kentucky, to-wit, an Act of the General Assembly of the Commonwealth of Kentucky, approved May 26, 1890, entitled, "An Act to re-apportion the state into eleven Congressional Districts," and an act of said General Assembly of the Commonwealth of Kentucky, passed March 12, 1898,

entitled, "An Act changing the boundaries of the third and eleventh Congressional Districts," and an Act of said General Assembly of the Commonwealth of Kentucky, passed March 11, 1898, and entitled, "An Act to change the boundaries of the eighth and eleventh Congressional Districts of Kentucky," upon the ground that each of said Acts was repugnant to the Constitution of the United States and the decision of said Court of Appeals was in favor of the validity of each of said Statutes, and in which cause was drawn in question the construction of a clause of the Constitution of the United States, and the decision of said Court of Appeals was against the right and privilege specially set up and claimed by said plaintiff-in-error under said clause of said Constitution, said right so specially claimed and set up, being the right of the plaintiff-in-error as a citizen of the United States to have a Republican form of Government in the Commonwealth of Kentucky, and to equal rights with other citizens in the election of members of the Congress of the United States from said state, and to equal representation with other citizens of the United States in the Congress of the United States, and in which said cause was drawn in question the construction of a Statute of the United States, to-wit, the Act of Congress approved February 25, 1882, entitled, "An Act making an apportionment of representatives in Congress among the several states under the tenth census," and the construction of a Statute of

52 the United States, to-wit, the Act of Congress approved February 7, 1891, entitled, "An Act making an apportionment of representatives in Congress among the several states under the eleventh census," and the construction of a Statute of the United States, to-wit, the Act of Congress approved January 16, 1901, entitled, "An Act making an apportionment of representatives in Congress among the several states under the twelfth census," and the decision of said Court of Appeals was against the rights specially set up and claimed under said Statutes of the United States by said plaintiff-in-error, the said rights so specially claimed and set up being the right of plaintiff-in-error as a citizen of the United States to vote for member of Congress in a Congressional District, composed of contiguous and compact territory, and containing as nearly as practicable a number of inhabitants equal to the number of inhabitants of the other Congressional Districts of Kentucky, and the right and privilege of plaintiff-in-error as a citizen of the United States and of Hart County, Kentucky, to have the names of candidates nominated for Congress in the eleventh Congressional District of Kentucky, certified by the Secretary of State of Kentucky, to the County Court Clerk of Hart County, Kentucky, and placed upon the ballots to be used in said Hart County, at the election to be held therein in November, 1908, each of which rights and privileges was denied as aforesaid by said Court of Appeals of Kentucky by virtue of said Statutes of Kentucky;

Presents herewith its assignment of errors, and prays for a writ of error to issue out of the Supreme Court of the United States to said Court of Appeals of Kentucky, to the end that the record
53 in said matter may be removed to said Supreme Court of the United States, and the errors complained of by plaintiff-in-error may be examined and corrected, and the judgment aforesaid of said Court of Appeals of Kentucky be reviewed and reversed.

W. C. HALBERT,
E. L. WORTHINGTON,
W. H. HOLT,
GEORGE DU RELLE,
Counsel for Plaintiff-in-Error.

Filed June 11, 1908.

ED. C. O'REAR,
Chief Justice, Court of Appeals of Kentucky.

Filed June 12, 1908.

NAPIER ADAMS, C. C. A.

54 And on said date there was filed in the office of the Clerk of the Court of Appeals of Kentucky a Writ of Error from the Supreme Court of the United States to the Court of Appeals of Kentucky and the allowance thereof by the Chief Justice of the Court of Appeals and which is hereto attached and is as follows:

55 UNITED STATES OF AMERICA,

Eastern District of Kentucky, Sixth Judicial Circuit, 22:

The President of the United States to the Honorable Judges of the Court of Appeals of the Commonwealth of Kentucky, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Court of Appeals of the Commonwealth of Kentucky, before you or some of you, being the highest Court of law or equity of the said State of Kentucky in which a decision could be had in the said suit, between Charles Richardson, plaintiff and appellant, and plaintiff-in-error, and H. V. McChesney, Secretary of State of the Commonwealth of Kentucky, P. F. Marshall, Clerk of the County Court of Green County, Kentucky, E. E. Biggs, Clerk of the County Court of Hart County, Kentucky, and S. E. Kerr, Clerk of the County Court of Taylor County, Kentucky, defendants and appellees, and defendants-in-error, wherein was drawn in question the validity of three statutes of said State of Kentucky, on the ground of their being repugnant to the constitution and laws of the United States, and the decision was in favor of such their validity, and wherein was drawn in question the construction of a clause of the constitution of the United States, and the decision was against the right and privilege specially set up and claimed under such clause of said constitution, and wherein was drawn in question the construction of three statutes of the United States, and the decision was against the right
56 and privilege specially set up and claimed under such clause of the said statute, a manifest error hath happened, to the great damage of the said Charles Richardson, plaintiff-in-error, as by his complaint appears,

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 10 day of July next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of June, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States of America the one hundred and thirty-second.

[Seal 6th Circuit Court, Eastern Ky. Dis., U. S. of America.]

CHAS. N. WIARD,

*Clerk of the Circuit Court of the United States,
for the Eastern District of Kentucky, at Frankfort.*

Allowed by

ED. C. O'REAR,

Chief Justice, Court of Appeals of Kentucky.

(Endorsed.) Filed Jun- 12, 1908. Napier Adams, C. C. A.

57 And on said date there was filed in the office of the Clerk of the Court of Appeals of Kentucky a Writ of Error Bond together with the Power of Attorney from Charles Richardson to George Du Rell and which are in words and figures as follows, to-wit:

58 Court of Appeals of Kentucky.

CHARLES RICHARDSON, Appellant,

vs.

H. V. McCHESNEY, Secretary of State, of the Commonwealth of Kentucky; P. F. MARSHALL, Clerk of the County Court of Green County, Kentucky; E. E. BIGGS, Clerk of the County Court of Hart County, Kentucky; and S. E. KERR, Clerk of the County Court of Taylor County, Kentucky, Appellees.

Know all men by these presents, That we, Charles Richardson, as principal, and C. C. McClarty as surety, are held and firmly bound unto H. V. McChesney, P. F. Marshall, E. E. Biggs and S. E. Kerr, defendants and appellees above named, in the full and just sum of Five Hundred Dollars (\$500.00) to be paid to the said defendants and appellees, their executors or administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our successors, representatives and assigns firmly by these presents.

Sealed with our seals and dated the 11th day of June, 1908.

59 Whereas, lately, at a session of said Court of Appeals of Kentucky in a suit pending in said court between Charles Richardson, plaintiff and appellant, and H. V. McChesney, Secretary of State of the Commonwealth of Kentucky, P. F. Marshall, Clerk of the County Court of Green County, Kentucky, E. E. Biggs, Clerk of the County Court of Hart County, Kentucky, and S. E. Kerr, Clerk of the County Court of Taylor County, Kentucky, defendants and appellees, a final judgment was rendered against said plaintiff and appellant, and the said Charles Richardson, plaintiff and appellant has sued out a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to said H. V. McChesney, P. F. Marshall, E. E. Biggs and S. E. Kerr is about to be issued, citing and admonishing them and each of them to be and appear at a session of the Supreme Court of the United States, to be holden at Washington.

Now, the condition of the above obligation is such that if the said Charles Richardson shall prosecute his writ of error to effect, and shall answer all costs that may be awarded against him, if he fails to make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

CHARLES RICHARDSON,
By GEORGE DU RELI,

Attorney in Fact.

C. C. McCLARTY.

60 Examined and approved,
ED. C. O'REAR,

*Chief Justice of the Court of
Appeals of Kentucky.*

Filed June 12, 1908.

NAPIER ADAMS, C. C. A.

61 STATE OF KENTUCKY,
 County of Jefferson, act:

Personally appeared before me this 11th day of June, A. D., 1908, the above named C. C. McClarty, to me personally known, and acknowledged the foregoing instrument to be his act and deed.

My commission expires —.

JNO. J. FLYNN,
Notary Public, Jefferson Co., Ky.,
Notary Public, Jefferson Co.

My commission Expires Mar. 11th, 1910.

62 STATE OF KENTUCKY,
 County of Jefferson, act:

The undersigned, C. C. McClarty, being duly sworn, states that he is the owner of property in the State of Kentucky subject to execution over and above his debts and exemptions allowed by law to the amount of One Thousand Dollars. (\$1000.00)

C. C. McCLARTY.

Subscribed and sworn to before me by C. C. McClarty, this 11th day of June, 1908. My commission as a Notary Public expires —.

[SEAL.]

JOHN J. FLYNN,
Notary Public, Jefferson Co., Ky.,
Notary Public, Jefferson Co.

My Commission expires Mar. 11th, 1910.

Filed June 12, 1908.

NAPIER ADAMS, C. C. A.

63 STATE OF KENTUCKY,
 County of Hart, act:

I, Charles Richardson, hereby constitute and appoint George Du Rell my true and lawful attorney, for me and in my name and stead, to execute any bond not exceeding the sum of Five Hundred Dollars, required by the Chief Justice of the Court of Appeals of Kentucky, or the acting Chief Justice thereof, upon issuing a citation to the defendants-in-error in a writ of error to be issued to reverse and correct the judgment and decision of said Court of Appeals of Kentucky, in a suit between me as plaintiff and appellant and H. V. McChesney, Secretary of State of the Commonwealth of Kentucky, P. F. Marshall, Clerk of the County Court of Green County, Kentucky, E. E. Biggs, Clerk of the County Court of Hart County, Kentucky, and S. E. Kerr, Clerk of the County Court of Taylor County, Kentucky, as defendants and appellees, lately, to-wit, on March 11, 1908, decided in said Court of Appeals, said bond to be conditioned that if I shall prosecute said writ of error to effect, and shall answer all costs that may be awarded against me, if I fail

to make my plea good, then said obligation is to be void, otherwise to remain in full force and virtue.

64

CHARLES RICHARDSON.

STATE OF KENTUCKY,

County of Hart:

Personally appeared before me Charles Richardson, to me personally known, who acknowledged the foregoing instrument to be his act and deed. My commission expires.

[SEAL.]

J. M. CRADDOCK,

Notary Public, Hart County, Ky.

June 11, 1908.

My commission expires March, 1912.

65 And on the — day of — there was filed in the office of the Clerk of the Court of Appeals of Kentucky the Original Citation with the approval of sureties endorsed thereon and which is attached hereto and which is as follows, to-wit:

66 UNITED STATES OF AMERICA, *set:*

The President of the United States to H. V. McChesney, Secretary of State of the Commonwealth of Kentucky, P. F. Marshall, Clerk of the County Court of Green County, Kentucky, E. E. Biggs, Clerk of the County Court of Hart County, Kentucky, and R. E. Kerr, Clerk of the County Court of Taylor County, Kentucky, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Court of Appeals of Kentucky, which court is the Supreme Court of said State, wherein Charles Richardson is plaintiff-in-error, and you are the defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff-in-error, as in the said writ of error mentioned, ought not to be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 11th day of June, A. D. 1908 and of the Independence of the United States the One hundred and thirty-second.

ED. C. O'REAR,

Chief Justice, Court of Appeals of Ky.

Attest:

NAPIER ADAMS, *Clerk.*

A copy of the foregoing citation has been served upon me this 16th day of June, A. D. 1908.

JEFF. HENY,
C. H. NOGGLE,*Counsel for Defendants-in-Error.*

Filed June 30th, 1908.

NAPIER ADAMS, *Clerk C. A.*

67 COMMONWEALTH OF KENTUCKY,
Court of Appeals, sct:

In obedience to the commands of the within attached Writ of Error, I hereby transmit to the Supreme Court of the United States a complete transcript of the entire record with all things concerning the same as same appears from the records on file in my office.

In Testimony Whereof I have hereunto subscribed my name and attached my official seal. Done at the Capitol at Frankfort, Kentucky, on this the 30th Day of June, A. D., 1908.

[Seal Kentucky Court of Appeals.]

NAPIER ADAMS,
Clerk Court of Appeals of Kentucky.

Endorsed on cover: File No. 21,252. Kentucky court of appeals. Term No. 456. Charles Richardson, plaintiff in error, *vs.* H. V. McChesney, secretary of state of the Commonwealth of Kentucky, *et al.* Filed July 6th, 1908. File No. 21,252.